UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Companies et al	)	Docket Nos. RT01-88-006, RT01-88-007,
	)	and RT01-88-008 (Not Consolidated)
	)	
Ameren Corporation on behalf of:	)	
Union Electric Company	)	
Central Illinois Public Service Company	)	
	)	
American Electric Power Service Corporation	)	
On behalf of :	)	
Appalachian Power Company	)	
Columbus Southern Power Company	)	
Indiana Michigan Power Company	)	
Kentucky Power Company	)	
Kingsport Power Company	)	
Ohio Power Company	)	
Wheeling Power Company	)	
	)	
Consumers Energy Company	)	
and Michigan Electric Transmission Company	)	
	)	
The Dayton Power and Light Company	)	
	)	
The Detroit Edison Company	)	
and International Transmission Company	)	
	)	
Exelon Corporation on behalf of:	)	
Commonwealth Edison Company	)	
Commonwealth Edison Company	)	
of Indiana, Inc.	)	
	)	
First Energy Corporation on behalf of:	)	
American Transmission Systems, Inc.	)	
The Cleveland Electric Illuminating Co.	)	
Ohio Edison Company	)	
Pennsylvania Power Company	)	
The Toledo Edison Company	)	
	)	
Illinois Power Company	)	
	)	
Northern Indiana Public Service Company	)	
	)	
Virginia Electric and Power Company	)	

COMMENTS & MOTION TO CONSOLIDATE
OF THE
ILLINOIS COMMERCE COMMISSION

Pursuant to Rule 211 and Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.211 and 18 C.F.R. §385.212, the Illinois Commerce Commission ("ICC") hereby submits its Comments and Motion to Consolidate on the filings submitted by the Alliance Companies in the above-captioned dockets. In support hereof, the ICC states as follows:

I. INTRODUCTION/BACKGROUND

The Alliance Company filings at issue address various compliance matters discussed by the Commission's Order issued on July 12, 2001.[1] The Commission's July 12 Order provided further guidance concerning the proposed Alliance RTO and required additional compliance filings by the Alliance Companies.[2]

In response, the Alliance Companies made two separate filings on August 31, 2001: (1) an Order No. 2000 compliance filing in Docket No. RT01-88-008 ("Compliance Filing"); and, (2) a Federal Power Act Section 205,[3] filing in Docket No. RT01-88-006 containing proposed transmission rates for the Alliance RTO as well as proposed revisions to the Alliance RTO Open Access Transmission Tariff ("Section 205 Rates Filing"). The Alliance Companies also submitted a filing on September 10 containing substitute tariff sheets to supplement their August 31 filings (RT01-88-007).

[1] Alliance Companies, et al., 96 FERC ¶ 61, 052 (2001) ("July 12 Order").
[2] The Order specifically required the Alliance Companies to submit a rate filing to address all outstanding Alliance RTO OATT issues.
[3] 16 U.S.C. § 824(d).

The filing in Docket No. RT01-88-008 modified certain terms and conditions of the Open Access Transmission Tariff ("OATT") in compliance with earlier Commission orders in this proceeding. Although the Alliance Companies' filing in Docket No. RT01-88-006 was made pursuant to Section 205 for purposes of modifying the rates in the OATT, several important changes to terms and conditions in Docket No. RT01-88-008 were addressed in that filing but included with the filing in Docket No. RT01-88-006.[4] Also, the Alliance Companies' filing in Docket No. RT01-88-007 contains tariff sheets to supplement the filings made on August 31. Accordingly, due to the overlap and interrelatedness of the subject matter, the ICC recommends that administrative efficiency merits the Commission consolidating these three subdockets (RT01-88-006, RT01-88-007 and RT01-88-008).

Collectively, the instant filings generally set out the rates and tariff terms and conditions that the Alliance Companies propose the Alliance RTO use at the time it commences operations on December 15, 2001. Although the proposals represented in these dockets by the Alliance Companies are extensive, further modifications and changes consistent with the recommendations herein are necessary if continued progress toward the development of an effective Alliance RTO transmission tariff is to be sustained.

The ICC notes that, despite the repeated concerns raised by the ICC and numerous other parties regarding independent oversight of any business decisions by the Alliance Companies, these filings were made with no such independent oversight in place. Instead, the Alliance Companies continue to make critical business decisions without the benefit of an independent board. As a result, many of the proposed changes to the Alliance RTO OATT rates, terms and

[4] The ARTO OATT was filed by the Alliance Companies in the rates docket (RT01-88-006), but the Alliance Companies' Cover Letter submitted with the compliance filing (RT01-88-008) states that the compliance filing "explains and supports the proposed changes to the terms and conditions of the Alliance RTO OATT made to

conditions have not been shown to be non-discriminatory, just and reasonable, or to be compliant with previous Commission directives and must be modified before the Commission can permit them to become effective. The ICC Comments address only some particular problematic aspects of the proposed Alliance RTO OATT, the Alliance Companies' Compliance Filing, and the Alliance Companies Rate Filing and attempt to remedy some of these deficiencies. The ICC's silence on all other aspects of the Alliance Companies' August 31 and September 10 filings in these dockets should not necessarily be construed as agreement with the Alliance Companies on those aspects.

With regards to the ARTO OATT, specifically, the ICC recommends several changes to Attachment Q of the ARTO OATT which deals with retail services. In 1997, the Illinois General Assembly enacted comprehensive legislation establishing a retail direct access program in Illinois.[5] The ICC's proposed changes are designed to bring the ARTO OATT more in line with Illinois' Retail Direct Access program. The ICC also suggests that it is premature for the Commission to properly consider Schedule 10 of the ARTO OATT. Schedule 10 of the ARTO OATT contains rates designed to recover administrative and start-up costs of the Alliance RTO " . . . . not otherwise included in rates established under other schedules."[6]

The ICC also takes several exceptions with the Alliance Companies' Compliance Filing. Namely, the ICC recommends certain changes to the current framework of the ARTO planning process specifically designed to limit control by transmission owners and to further support the development of robust competition. Additionally, the transmission pricing protocol proposed by the Alliance Companies must be consistent with prior Commission precedent requiring all

address outstanding non-rate tariff issues raised but not resolved in a prior order in these proceedings." Compliance Filing Cover Letter at 2.

[5] 220 ILCS 5/16-101 et al. ("Electric Service Customer Choice and Rate Relief Law of 1997").

[6] Alliance Companies Rates Filing Cover Letter at 10.

ARTO load to be taken under the ARTO OATT. Finally, the ICC, as it has done in previous Commission proceedings[7], urges the Commission to reject the Illinois Alliance Companies' proposal to switch to levelized ratemaking. To the extent that proposed switch to levelized ratemaking in the individual Illinois Alliance Companies' rate filings impacts the Alliance RTO's proposed Regional Through and Out Rates, Zonal Transition Adjustment rates or Super-Regional Adjustment rates, the ICC protests those rates as well.

In short, the ICC recommends that the Commission require the Alliance Companies to make their respective August 31 and September 10 filings consistent with the ICC changes described herein as well as all previous Commission directives and precedents.

II. ALLIANCE RTO OATT ISSUES

A. Several Sections of Attachment Q to the ARTO OATT Relating to Retail Service Require Further Modifications to Be Consistent with the Illinois Retail Direct Access Program.

Attachment Q to the ARTO OATT was submitted by the Alliance Companies "to reflect the specific terms if any, applicable to retail service in the Pricing Zones."[8] As previously mentioned, in 1997, Illinois enacted comprehensive legislation which established a retail direct access program for electricity consumers in Illinois. The ICC believes additional changes to Attachment Q are necessary to accommodate Illinois' retail direct access program. Accordingly, the ICC recommends that, before approving any aspect of the proposed ARTO OATT, the Commission should require that ARTO, at a minimum, make the following changes.

[7] The ICC protested the proposal by Commonwealth Edison and Illinois Power to shift to levelized rates in comments filed in Docket Nos. ER01-2999 and ER01-2992.
[8] *See* Alliance Companies Rates Filing - Attachment Y at 19.

1. OATT Section 2.2

Section 2.2 of the ARTO OATT must be supplemented to clearly express that Illinois retail customers are "existing firm service customers" as that term is used in the OATT. More specifically, Ameren's part of Attachment Q should be revised to include a revised Section 2.2 similar to the one that appears in ComEd's part of Attachment Q (Volume II Original Sheet No. 114 of the ARTO OATT). The ICC requests that the following language be added to Ameren's part of Attachment Q to replace Section 2.2 as it appears in the ARTO OATT:

> **2.2 Reservation Priority For Existing Firm Service Customers:** Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more, or any retail customer as described in Section 1.11(ii)), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed, or when a bundled retail customer first requests unbundled transmission service. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Owner or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one-year or longer or when a bundled retail customer first requests unbundled transmission service. If competing existing firm service requirements customers apply for service that cannot be fully provided, the priority rights will be ranked in accordance with first-come, first-served principles. If firm service customers tie, then the capacity for which they receive priority rights under this Tariff shall be apportioned on a pro rata basis.

Section 2.2 of the OATT constitutes a key transmission access provision. To facilitate retail transmission service in Illinois, it is important to make clear, as does ComEd's proposed modification to Section 2.2 of the OATT, that retail customers are "existing firm service customers" as that term is used in the OATT and are entitled to all rights consistent with that status. IP has a provision in its part of Attachment Q that appears to accomplish the same thing

as the above language that is included in ComEd's part of Attachment Q. Although, the ICC prefers that these types of provisions be uniform across the Illinois utilities to facilitate ease of access, the ICC does not object, at this time, to IP's proposed modifications to Section 2.2 provided that they accomplish the same result as the language recommended above. Prior to the filing of its comments, the ICC Staff spoke with and was authorized by Ameren representatives to indicate that Ameren does not object to this particular ICC modification.

2. OATT Section 24.1

It is important for the OATT to recognize the current ICC metering requirements in place for retail customers. The existing language in Section 24.1 of the OATT is inconsistent with Illinois' retail direct access program because it does not allow for the diversity of metering ownership that Illinois' unbundled metering rules provide for.[9]

Section 24.1 of the proposed ARTO OATT states as follows:

> **24.1 Transmission Customer Obligations:** Unless otherwise agreed, the Transmission Customer shall be responsible for the cost of installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider or its Designated Agent.

This provision places requirements on Illinois retail customers and Illinois alternative retail energy suppliers that are not consistent with Illinois' rules and regulations. The Illinois utilities, therefore, should be required to modify their respective parts of Attachment Q to include the following language concerning retail customer metering obligations.

[9] 83 Ill. Admn. Code Part 460 (effect. December 15, 2000).

Transmission Customer Metering Obligations.

> For Transmission Customers acting as designated agent for Eligible Customers that are retail customers as defined in Section 1.11(ii) of the ARTO OATT, and for Transmission Customers that are retail customers as defined in Section 1.11(ii), the requirements of Section 24.1 of the OATT will be satisfied by the maintenance of metering that complies with the rules and regulations of the Illinois Commerce Commission concerning metering and any applicable tariffs of [ComEd] [Ameren] [IP] subject to the jurisdiction of the Illinois Commerce Commission.

Although the metering language proposed by the ICC here is similar to that proposed by IP in Attachment Q-17, paragraph 4 (Volume II Original Sheet No. 132), the ICC's proposed language provides added clarity. Also, the ICC prefers to have uniformity in these metering provisions across the Illinois utilities to facilitate ease of use in the tariff. Accordingly, the ICC requests that IP and Com Ed be required to modify their respective portions of Attachment Q to reflect this change. Prior to the filing of its comments, the ICC Staff spoke with and was authorized by Ameren representatives to indicate that Ameren does not object to this particular ICC modification.

3. OATT Section 29.2(vii)

Section 29.2(vii) requires the minimum term for Network Integration Transmission Service to be one year. This provision is unnecessarily restrictive and will not accommodate Illinois' retail direct access program.

The following provision appears in ComEd's part of Attachment Q, Volume II Original Sheet No. 116 of the ARTO OATT.

> **Term of Network Integration Transmission Service:** The minimum term for Network Integration Transmission Service is one year or for any shorter period necessary to accommodate retail access under Illinois law.

The ICC recommends that this same modification to Section 29.2(vii) of the ARTO OATT be included in IP's part of Attachment Q. Prior to the filing of its comments, the ICC Staff spoke with and was authorized by Ameren representatives to indicate that Ameren does not object to this particular ICC modification.

4. OATT Sections 29.2(iii) and 29.2(iv)

Sections 29.2(iii) and 29.2(iv) of the ARTO OATT require Network Integration Transmission service customers to submit to the transmission provider long-term forecasts of network load and network resources. These provisions, in their current form, are inconsistent within the context of Illinois' retail direct access program.

Both IP and ComEd include provisions in their parts of Attachment Q to address long-term forecasts of network load and network resources.[10] These proposed provisions, however, are inadequate because they are imprecise and too narrowly drawn. Consequently, the ICC recommends that adoption of the following provision for each of the Illinois utilities.

> **Network Integration Transmission Service Load and Resource Forecast Requirements:** For Eligible Customers that are retail customers as defined in Section 1.11(ii), or Transmission Customers acting as designated agent for such Eligible Customers, the Transmission Provider will not require the submission of a 10-year load forecast or 10-year resource forecast by the Transmission Customer. Rather, such Eligible Customers and Transmission Customers shall only be required to submit a list of resources sufficient to cover load for the period of service requested. The Transmission Provider in no way thereby assumes responsibility for serving such load. The Transmission Customer acting as designated agent for Eligible Customers as described above shall remain responsible for serving the load of Eligible Customers that they agree to serve.

[10] *See* Com Ed, Attachment Q, Volume II Original Sheet No. 116; *See* also IP, Attachment Q, Volume II Original Sheet No. 133).

5. OATT Section 29.4

Section 29.4 of the ARTO OATT (Network Customer Facilities) places on Transmission Customers taking Network Integration Transmission service the responsibility for installing, maintaining, and operating all facilities on the Transmission Customer's side of each delivery point or interconnection. Section 29.4 specifically provides as follows:

> The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer's constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

The current language in Section 29.4 will not work in the context of Transmission Customers acting as designated agent for Eligible Customers that are retail customers as defined in Section 1.11(ii) of the ARTO OATT, nor will it work for Transmission Customers that are retail customers as defined in Section 1.11(ii) since the interconnection point is the relevant demarcation for facilities responsibility for these types of customers.

Consequently, Section 29.4 of the ARTO OATT requires modification for these types of Transmission Customers. The ICC recommends that the following provision be included in the relevant parts of Attachment Q for each of the Illinois utilities.

> For Transmission Customers acting as designated agent for Eligible Customers that are retail customers as defined in Section 1.11(ii) of the ARTO OATT, and for Transmission Customers that are retail customers as defined in Section 1.11(ii), the requirements of Section 29.4 of the OATT will be satisfied by the installation of facilities on the retail customer's side of the interconnection between: (1) the Transmission Provider and the retail customer; or (2) [ComEd] [IP] [Ameren] (the delivery services provider) and the retail customer; as the case may be.

IP's part of Attachment Q (Volume II Original Sheet No. 133) includes a provision that is similar to this ICC proposal. However, the ICC's proposed language provides greater clarity. The ICC, therefore, recommends that this ICC proposed provision be included in the relevant part of each Illinois company's Attachment Q. Prior to the filing of its comments, the ICC Staff spoke with and was authorized by Ameren representatives to indicate that Ameren does not object to this particular ICC modification.

6. OATT Section 7.3

Section 7.3 of the ARTO OATT describes procedures the Alliance RTO, as transmission provider, may follow should a transmission customer default on its transmission payment obligations. Section 7.3 states as follows:

> **7.3 Customer Default:** In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

This particular provision of the ARTO OATT could be interpreted as permitting the Alliance RTO to pursue individual Illinois retail customers for payment of transmission fees

should their Illinois-authorized alternative retail energy supplier ("ARES") fail to fulfill its payment obligations to the ARTO.

The ICC points out that it appears other provisions are included in the ARTO OATT that would make it unlikely that the ARTO would need to resort to the drastic action of pursuing individual retail customers for payment should an ARES default on its payment to the ARTO. For example, to ensure that Transmission Customers (including ARES) are creditworthy and can meet their payment obligations, Section 11 of the ARTO OATT imposes credit requirements on Transmission Customers. Also, the Alliance Companies' proposed Schedule 10 would permit the ARTO to recover in its administrative charge "bad debt expense to recover Transmission Customer defaults on OATT charges. In effect, Section 11 and Schedule 10 of the ARTO OATT will serve to mitigate the need for the ARTO to pursue individual retail customers of Illinois ARES for payment of transmission fees upon ARES default, but nothing in the ARTO OATT directly prohibits this outcome. Individual retail customers who participate in Illinois' retail direct access program through an ARES as their designated agent for procuring transmission service may be at some risk should the ARES not satisfy its transmission payment obligations to the Alliance RTO.

The ICC declines, herein, to take a position on this situation created by the language in Section 7.3 of the ARTO OATT because the ICC is currently evaluating this same issue in several Delivery Services Tariff proceedings filed by the Illinois utilities and currently pending before the ICC.[11] The ICC notes, however, that intervenors (including ICC Staff) in the ICC proceedings have raised a number of concerns and questions with regard to allowing for retail customer liability in the event of Transmission Customer default or insolvency. The ICC,

therefore, highlights this issue for the Commission's consideration and urges the Commission to direct its Staff to investigate this issue. The Commission's Staff, if it chose, could consult the public record that is available in the ICC proceeding.

B. Commission Consideration of ARTO OATT Schedule 10 Is Premature.

According to the Alliance Companies, Schedule 10 to the ARTO OATT is "intended to recover administrative and start-up costs of the Alliance RTO not otherwise included in rates established under other schedules."[12] The Alliance Companies request that the 120-day filing requirement for Schedule 10 be waived by the Commission.[13]

The ICC, as well as numerous other parties, has consistently expressed concern that the Alliance Companies are improperly making decisions and incurring RTO start-up costs that should be made by an independent RTO governing entity.[14] The underlying rationale for an independent governing entity during the RTO design phases is to avoid discriminatory skewing of the Alliance RTO design. In fact, in its most recent filing, the ICC recommended that the Commission require whatever independent board is seated (both interim, if seated, and permanent) "to review and amend, as necessary, prior implementation decisions made by the Alliance Companies and the Alliance Bridgeco, going back to January 16, 2001 (or July 12, 2001, at the latest) as well as all future compliance filings."[15] The ICC also specifically recommended that the ARTO board issue a report upon conclusion of its review and that ". . .

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[11] *See* ICC Docket No. 01-0432 (filed June 1, 2001)("Com Ed Delivery Services Tariff") and ICC Docket No. 01-423 (filed June 1, 2001)("Illinois Power Delivery Services Tariff").
[12] Alliance Rates Filing Cover Letter at 10.
[13] Alliance Rates Filing Cover Letter at 10.
[14] See, e.g., ICC Comments on Alliance Business Plan, *Docket Nos.* RT01-88-005, ER99-3144-013, and EC99-80-013 (September 20, 2001).
[15] Id. at 11.

any costs arising from all Alliance Companies' RTO development decisions found to be imprudent by the Commission following review of the report should be disallowed for rate recovery purposes." [16]

The Alliance Companies conceded in their filing that ". . . when working to develop the rates for Schedule 10 . . . . . sufficient e-tag information is not available to develop the rates as originally proposed."[17] Moreover, Schedule 10 is not complete and states that rates are still "to be filed by the Alliance RTO." ARTO OATT Schedule 10.

Given the aforementioned circumstances, the Commission should not, at this time, take into consideration the Schedule 10 language proposed by the Alliance Companies in their August 31 filings. The ICC also supports the Alliance Companies' request that Schedule 10 rates be submitted "by **the Alliance RTO**," rather than **the Alliance Companies**. The ICC declines to take a position on the Alliance Companies' request for waiver of the 120-day filing requirement. However, given the controversy over how to evaluate and reconcile the prudence of Alliance Companies' RTO design and start-up decisions made during the absence of an independent board, all interested parties must be permitted sufficient time to evaluate Schedule 10 and Schedule 10 rates once they are properly filed.

III. COMPLIANCE PLAN ISSUES

A. The Transmission Planning Protocol Must Support Robust Competition and Must Not Permit Control By Transmission Owners

1. The Planning Process Must be Designed to Support Robust Competition in Electric Power Markets

[16] Id. at 11-12.
[17] Alliance Rates Filing Cover Letter at 10.

Attachment E to the Compliance Filing constitutes the Alliance RTO Planning Protocol. Section 1.3 of the Planning Protocol states, "The planning process described in this protocol is intended to ensure fair, unbiased and efficient enhancement of the Transmission System **to support robust competition in the bulk power market."** Although the ICC supports this statement of general objective, the current framework and focus of the proposed ARTO planning process is not well designed to accomplish this goal.

For example, as proposed in the ARTO Planning Protocol, the major responsibilities of regional planning will be conducted through the Reliability Planning Group. The Reliability Planning Group is described in Section 2.3 of the Planning Protocol. The core responsibility of the Reliability Planning Group is to "identify[ ] the need for system expansion or reinforcement through assessment of the ability of the planned system **to meet Alliance RTO reliability needs and to support transmission service requests**."[18] The Alliance RTO must maintain focus on transmission planning to meet reliability needs and to support transmission service requests because this is a vitally important responsibility. The Planning Protocol, however, does not establish any functional group to be responsible for market-supportive transmission planning analogous to the Reliability Planning Group which will be responsible for reliability planning. Without such a corresponding functional group to focus on transmission planning to support competitive power markets, there is little reason to believe that the stated objective of the Planning Protocol, i.e., "**to support robust competition in the bulk power market,"** can be met.

Rather than adding another level of bureaucracy to the Planning Protocol to address this deficiency, the ICC proposes that the responsibilities of the Reliability Planning Group merely

[18] Section 2.3 of the Planning Protocol.

be expanded to include a focus on transmission planning and expansion to support robust competition in electric power markets in addition to its current responsibilities to meet reliability needs and to support transmission service requests. In conjunction with the adoption of that proposal, the ICC recommends that the name of the Reliability Planning Group be changed, to remove the singular focus on reliability, to "Expansion Planning Group," "Long-Term Planning Group" or, simply, "Planning Group." Similarly, the membership diversity of the Reliability Planning Group may need to be expanded as well to reflect its expanded functions.[19] In any event, the focus of such group must expand to include market supportive transmission planning as well as reliability planning if the transmission objectives of the Planning Protocol are to be given a realistic chance of success.

2. The Planning Protocol Must Not Permit the Alliance Companies to Either Implicitly or Explicitly Control the Transmission Planning Process

Paragraph 3.7(a) of the Planning protocol states that transmission owners will be responsible for "performing planning studies to propose and evaluate alternatives to serve new or existing load, to connect new generation or to fulfill transmission service requests that require system additions or modifications." Paragraph 3.1 of the Planning Protocol also provides that,

> The Transmission Owners will each develop expansion plans for their transmission facilities, utilizing their knowledge of their systems, their loads, load growth, new generation connections and transmission service requests received through the Alliance RTO.

[19] As currently proposed in Section 2.3 of the Planning Protocol, the Reliability Planning Group "will be comprised of representatives from each Transmission Owner and local distribution utility wishing to participate." Representatives of other interested parties ***may*** participate in the Reliability Planning Group, however no provisions are made for this participation.

Paragraph 3.1 goes on to state, "The overall Alliance RTO planning process relies on annual coordination of all transmission plans proposed by the Alliance RTO or by individual Transmission Owners."

As the Commission has stated previously, the RTO's transmission expansion plan must be more than a compilation of "traditional expansion plans developed by individual transmission owners to serve their needs."[20] Similarly, it is insufficient for the RTO's transmission expansion plan to consist of a compilation of individual transmission plans of transmission owners and non-owner market stakeholders. Simple coordination of outside-produced transmission expansion plans will not achieve proper RTO objectives. Rather, the Alliance RTO must have a highly developed independent internal planning capability whose focus is on enhancing regional reliability and facilitating regional competitive power markets. Otherwise, the transmission owners and other market stakeholders, whose business interests may not be as neatly aligned with these reliability and competitive market public policy interests, will be able to implicitly control the transmission planning results through greater expertise or strong business interest.

Section 3.1 of the Planning Protocol states that, "The Alliance RTO will take a clear and prominent role in a collaborative process to develop Transmission System plans." The ICC supports a collaborative process provided that the Alliance RTO has a highly developed independent internal planning capability so as not to be unduly influenced by the individual transmission owner plans or market stakeholder plans. However, as the Commission clearly articulated in its PJM Order, it must be the RTO, "who shoulders the ultimate responsibility for developing the plan and conducting all necessary studies and analyses."[21]

[20] PJM Interconnection, L.L.C., 96 FERC 61,060 at 61,216 (2001)("PJM Order").
[21] Id.

Accordingly, the Alliance RTO Transmission Planning Protocol should be modified to: (1) ensure that the Alliance RTO will put in place a highly developed independent internal planning capability and the capability to conduct all necessary studies and analyses; (2) clarify the "clear and prominent role" that the Alliance RTO will take in the planning process; and (3) clarify that the Alliance RTO will shoulder the ultimate responsibility for developing the transmission plans regardless of the degree of collaboration used in the process.

B. The Transmission Pricing Protocol Must Be Modified to Make All ARTO Load Subject to the ARTO OATT.

Section 2.1.5 of the Alliance RTO Protocol for Transmission Service Pricing, Discounting, and Grandfathered Contracts[22] makes all uses of the transmission system subject to the "pricing, terms and conditions" of the Alliance RTO OATT ***except*** transmission owners serving bundled load or grandfathered contracts are ***not*** charged the zonal facilities component of the zonal rate for bundled load or grandfathered contracts." See, Section 2.1.5(a) and (b). The ICC believes that the aforementioned exception found in the Alliance RTO proposal is unacceptable because Commission precedent requires the Alliance RTO to place and provide all load, without exception, under the OATT.

In its recent Midwest ISO Order, the Commission concluded that the Midwest ISO design that failed to place all Midwest ISO load on the Midwest ISO OATT violates Order 2000.[23] In that Order, the Commission stated as follows:

> The Midwest ISO's origin dates back to January 15, 1998, when it filed with the Commission in Docket Nos. EC98-24-000 and ER98-1438-000 for Commission approval of the Midwest ISO Tariff and Midwest ISO Agreement. In that Agreement, the Midwest ISO proposed *to* ***not place existing bundled retail load***

[22] *See* Attachment G to Aug. 31 Compliance Filing.
[23] 97 FERC ¶ 61,033.

> ***and any grandfathered wholesale load under the Midwest ISO's Tariff*** for at least a six year transition period. In the context of an ISO, the Commission accepted the Midwest ISO's proposal in its September 16 Order.[24] Now, however, the Commission must review its proposal in the context of Order No. 2000.

Citing its decision in Southern,[25] Order No. 2000 and section 35.34(k) of the Commission regulations, the Commission stated that its policy is to require that an RTO be the only provider of transmission services over the facilities under its control. Accordingly, the Commission directed the Midwest ISO to revise the Midwest ISO Agreement and Tariff, as necessary, to place and provide all load under the Midwest ISO's Tariff.

In its Midwest ISO Order concluding that all load must be placed on the OATT, the Commission did not identify any circumstances or situations for which exceptions may apply. The Alliance RTO suffers from a similar design flaw regarding "existing bundled retail load and any grandfathered wholesale load" as did the Midwest ISO. Accordingly, pursuant to its Midwest ISO precedent, the Alliance Companies (or Alliance RTO) should be directed to revise the Alliance RTO Agreement and Tariff, as necessary, "to place and provide all load under the [Alliance RTO's] Tariff." In particular, Section 2.1.5(a) and (b) of the Alliance RTO Protocol for Transmission Service Pricing, Discounting, and Grandfathered Contracts require modification.

IV. RATE CASE ISSUES

A. The Collective Alliance Companies' Support for ComEd's and Illinois Power's Proposed Switch to Levelized Rates is Improper and All Proposed

[24] 84 FERC ¶ 61,231 at 62,167-68 (1998)(emphasis added).

[25] See Southern Company Services, Inc., 94 FERC ¶ 61,271 (2001).

Alliance RTO Rates Subsequently Flowing From the ComEd and Illinois Power Rates are Unjust and Unreasonable.

In Orders 2000 and 2000-A, the Commission stated that the use of levelized rates may be appropriate in the RTO context.[26] The Commission further explained that one of the main reasons for allowing the use of levelized rates is to address concerns of reduced utility revenues associated with RTO formation.

In their August 31st rates filing, the Alliance Companies submitted the Alliance RTO OATT and the concomitant schedules that reflect the actual rates for transmission and ancillary services to be provided by the Alliance RTO. The Alliance Companies seek Commission authorization which would make the proposed rates effective as of December 15, 2001. In their cover letter accompanying the rate filing, the Alliance Companies make reference to the five Alliance Companies that filed individual transmission rate filings on August 31, 2001. Specifically, the Alliance Companies' Cover Letter submitted with the rates filing provides as follows:

> Each of these [five] companies therefore is making an individual Section 205 filing concerning these rates contemporaneously with this filing. Each of these transmission owners seeks to establish rates for their zonal facilities component under Schedules 7, 8, and 9 that use a levelized rate design. The filing of levelized rates by these individual companies reflects the decision of the Alliance Companies collectively to provide an opportunity for members to implement this innovative rate approach.[27]

It is the ICC's position that, under certain circumstances concerning accumulated depreciation, allowing utilities to switch from depreciated non-levelized ratemaking to gross levelized ratemaking would result in artificially high transmission rates that would permit such

[26] Order No. 2000, *Regional Transmission Organizations*, 65 Fed. Reg. 809, slip op. at 31,194 (Jan. 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), *order on reh'g.*, Order No. 2000-A, 65 Fed. Reg. 12,088, slip op. at 31,386 (Mar. 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

[27] Alliance Companies Rates Filing Cover Letter at 9.

utilities to "over-recover" their costs, thereby resulting in an unjust and unreasonable windfall for such utilities. On October 2, 2001, the ICC submitted Comments opposing the proposals of Illinois Power and ComEd to switch to gross levelized ratemaking from net depreciated non-levelized ratemaking.[28] The ICC incorporates herein its Comments submitted in those dockets.

To the extent that the filing of levelized rates by Illinois Power and ComEd in their individual transmission rate dockets "reflects the decision of the Alliance Companies collectively to provide an opportunity for members" to implement an "innovative rate" approach (as quoted above from page 9 of the Alliance Companies' rate filing), then the ICC also herein protests that collective Alliance Companies' decision.

Also, to the extent that IP and ComEd's proposed switch to levelized ratemaking in their individual rate filings impacts the Alliance RTO's proposed Regional Through and Out Rates, Zonal Transition Adjustment rates or Super-Regional Adjustment rates, the ICC protests those rates as well. Any Alliance RTO rates that flow from, are derived by, or are based on, the unjust and unreasonable levelized transmission rates proposed by ComEd and IP are unjust and unreasonable.

The ICC also takes additional exception to the Alliance Companies' characterization of their proposal to switch to levelized rates as "innovative rates." In a recently-issued Midwest ISO Order[29], the Commission found as follows:

> The Commission finds that the proposed adjustment to ROE to incent membership in the Midwest ISO constitutes an innovative rate proposal as defined in Order No. 2000.[30] Under the innovative rate requirements of Order No.

[28] *See* Dkts. ER01-2999-000 (Illinois Power) and ER01-2992-000 (Commonwealth Edison Company).
[29] 97 FERC ¶ 61,033 (October 11, 2001).
[30] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom, Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.).

> 2000 and the Commission's regulations promulgated thereunder, the Midwest ISO must first qualify as an RTO in order to receive approval of an innovative rate proposal.

The Commission rejected the "innovative rate" proposal made by the Midwest ISO transmission owners and by the Midwest ISO without prejudice to the Midwest ISO re-submitting such a proposal once it achieves RTO status. Although the Alliance Companies' levelized rates proposal merits outright rejection, should the Commission decide to treat it as an "innovative rate" proposal, it should be rejected without prejudice to re-filing by the Alliance RTO once that entity has attained RTO status.

V. CONCLUSION

WHEREFORE, for all the aforementioned reasons, the ICC respectfully request that the Commission cause the Alliance Companies to make the changes recommended above. In particular, the ICC requests that the Commission: (1) make all necessary modifications to Attachment Q of the ARTO OATT required to accommodate Illinois' Retail Direct Access Program; (2) postpone consideration of the Alliance Companies' proposal regarding the recovery of administrative and start-up costs; (3) modify the Alliance RTO Transmission Planning Protocol to ensure independent pro-competitive planning; (4) modify the Alliance RTO Transmission Pricing Protocol to adhere to prior Commission precedent; (5) find unjust and unreasonable: (a) ComEd and IP's proposal to switch to gross levelized ratemaking, and (b) the collective decision of the Alliance Companies to support the switch to levelized rates by the individual companies; and (c) any Alliance RTO rate that is impacted by ComEd and IP's unjust and unreasonable rates; and, for any and all other appropriate relief.

October 25, 2001

Respectfully submitted,

ILLINOIS COMMERCE COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of this pleading to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding, a copy of which is attached, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 25th day of October, 2001.

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Thomas G. Aridas
Special Assistants Attorney General
Illinois Commerce Commission